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November 18, 2013

VIA ECF

Magistrate Judge James Orenstein
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Phoenix Beverages, Inc. et al. v. Exxon Mobil Corporation et al.*, C.A. 12-CV-03771 (PKC) (JO)

Dear Magistrate Judge Orenstein:

I represent Third-Party Defendant Emhart Teknologies LLC (“Emhart Teknologies”) in the above-entitled matter. I am writing to set forth my understanding of the current procedural posture of this matter and the deadline for the filing of responses to the third-party complaints.

On September 18, 2013, Emhart Teknologies requested an extension of time until November 18, 2013 to answer, move, or otherwise respond to the third-party complaints filed by Third-Party Plaintiffs Exxon Mobil Corporation (“Exxon Mobil”) and Quanta Resources Corporation (“Quanta Resources”). *See* Docket Entries #115 and 116. Both Exxon Mobil and Quanta Resources consented to these requests. By order dated September 19, 2013, Your Honor granted these requests.

Also on September 19, 2013, Emhart Teknologies sought to join in the request for a pre-motion conference made by counsel for Third-Party Defendant Rexam Beverage Can Company (“Rexam”) on September 10, 2013, pursuant to Rule 3.A of Judge Chen’s Individual Practices and Rules. *See* Docket Entry #121. The requested pre-motion conference involved two motions pursuant to Fed. R. Civ. P. 12(b)(6): (1) a motion to dismiss Count I of the third-party complaint of Third-Party Plaintiff Exxon Mobil involving claims under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a); and (2) a motion to dismiss Count I of the third-party complaint of Third-Party Plaintiff Quanta Resources involving the same claims under Section 107(a) of CERCLA. By order dated September 25, 2013, Judge Chen denied Rexam’s request for a pre-motion conference as well as Emhart Teknologies’ request to join.

On September 27, 2013, by supplemental order to the original September 25, 2013 order, Judge Chen extended the Third-Party Defendants’ time to file an answer or to renew their request for a pre-motion conference to 14 days after Judge Irizarry’s ruling on the identical motion in the related *DMJ Assoc., LLC v. Capasso, et al.*, 97-CV-7285 litigation. Emhart Teknologies understands that this supplemental order supersedes the extension of time to answer, move, or otherwise respond that was granted by Your Honor on September 19, 2013. Thus, in

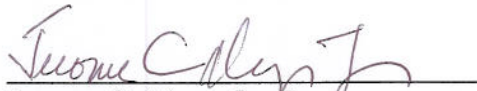
Magistrate Judge James Orenstein

Page 2

November 18, 2013

accordance with Judge Chen's supplemental order of September 27, 2013, Emhart Teknologies will file its answer or renew its request for a pre-motion conference within 14 days after Judge Irizarry's ruling on the identical motion in the related DMJ litigation.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jerome C. Muys, Jr.", is written over a horizontal line.

Jerome C. Muys, Jr., Esq.

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Cc: Counsel of Record (via ECF)